

No. 16107

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United States  
Court of Appeals  
for the Ninth Circuit

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RICHARD C. HOY, District Director of Immigration and Naturalization Service, Los Angeles, California, Appellant,  
vs.

MANUEL MENDOZA-RIVERA, Appellee.

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Transcript of Record

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Appeal from the United States District Court for the  
Southern District of California,  
Central Division

FILED

OCT - 9 1958

PAUL P. O'BRIEN, CLERK



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## INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Answer to Petition for Review.....	8
Appeal:	
Application for Extension of Time to File and Docket Record on.....	30
Certificate of Clerk to Transcript of Record on .....	31
Designation of Record on (USCA).....	34
Notice of .....	29
Statement of Points on (USCA).....	33
Stipulation Regarding Exhibit A on (USCA)	36
Application for Extension of Time in Filing and Docketing Record and Order Thereon; Affidavit of Norman R. Atkins.....	30
Certificate of Clerk to Transcript of Record...	31
Designation of Record on Appeal (USCA)....	34
Findings of Fact, Conclusions of Law and Judgment .....	20
Judgment .....	27
Names and Addresses of Attorneys.....	1

ii.

Notice of Appeal.....	29
Opinion .....	15
Petition for Judicial Review.....	3
Pre-Trial Conference Order.....	11
Statement of Points on Appeal (USCA).....	33
Stipulation Regarding Exhibit A (USCA)....	36
Stipulation Substituting Party Defendant and Order Thereon .....	28

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\* Page numbers appearing at bottom of page of Original Transcript of Record.





In the United States District Court, Southern  
District of California, Central Division

No. 813-57 HW

MANUEL MENDOZA-RIVERA,           Plaintiff,

vs.

ALBERT DEL GUERCIO, as District Director  
of the Immigration and Naturalization Service,  
Los Angeles, California,           Defendant.

PETITION FOR JUDICIAL REVIEW OF  
ORDER OF DEPORTATION AND DE-  
CLARATORY JUDGMENT

Plaintiff alleges:

I.

This petition is filed and these proceedings are instituted against the defendant pursuant to Title 28, U.S.C.A. Section 2201, commonly known as the Declaratory Judgment Act, and Title 5, U.S.C.A. Section 1009, commonly known as Section 10 of the Administrative Procedure Act, for a judgment declaring that plaintiff is not deportable from the United States as charged by the defendant.

II.

That the plaintiff is a resident of the County of Los Angeles, State of California, within the jurisdiction of this Court.

III.

That the defendant, Albert Del Guercio, is the District Director of the Immigration and Natural-

ization Service, Department of Justice, in Los Angeles, California. [2]

#### IV.

That the plaintiff is a native and citizen of Mexico, 24 years of age, who last entered the United States at San Ysidro, California, on or about March 15, 1955.

#### V.

That plaintiff on or about January 10, 1952, at the age of 18, was convicted under Section 11500, Health and Safety Code of the State of California, of possession of flowering tops and leaves of Indian Hemp, committed on October 25, 1951. He was sentenced to ninety days in the Los Angeles County Jail, which, under California law, made the offense for which he was convicted a misdemeanor.

#### VI.

That Indian Hemp is commonly known as Marijuana.

#### VII.

That on or about January 11, 1957, the plaintiff was ordered deported from the United States as an alien who was excludable at the time of entry into the United States because of previously having been convicted of illicit possession of a narcotic drug in violation of Section 11500, Health and Safety Code of California, by a Special Inquiry Officer, of the Immigration and Naturalization Service at Los Angeles, California.

#### VIII.

That on or about January 31, 1957, the Board of

Immigration Appeals, United States Department of Justice, ordered the proceedings terminated on the ground that at the time of his last entry in March 1955, a record of conviction of the mere possession of a narcotic drug was not a ground of excludability.

### IX.

That on or about April 12, 1957, the plaintiff was ordered deported from the United States, by a Special Inquiry Officer, of the Immigration and Naturalization Service, acting as a subordinate and under the direction of the defendant, on the charge stated in the Order To Show Cause:

“Section 241 (a)(11) of the Immigration and Nationality Act, in that, you at any time have been convicted of a violation of any law or regulation relating to the illicit possession of narcotic drugs: Section 11500, Health and Safety Code of the State of California.” [3]

### X.

That on or about May 20, 1957, the Board of Immigration Appeals, United States Department of Justice, Washington, D. C., affirmed the aforementioned decision of the Special Inquiry Officer and ordered that the Appeal of the plaintiff to said Board be dismissed.

### XI.

That on or about June 6, 1957, the defendant, acting as the aforesaid, and through a subordinate, advised that the plaintiff was granted to July 15, 1957,

to depart from the United States under the outstanding Order of Deportation. It is the intention of the defendant to take the plaintiff into custody and deport him from the United States under the Order of Deportation if he has not departed under the Order by July 15, 1957.

## XII.

That defendant has made an error in law in that the charge upon which the Order of Deportation is based is not applicable.

Section 241 (a)(11) of the Immigration and Nationality Act, as amended by the Act of July 18, 1956, does provide for the deportation of an alien who at any time has been convicted of a violation of any law or regulation relating to the illicit possession of narcotic drugs. However, the Act of July 18, 1956, commonly known as the Narcotic Control Act of 1956, makes a clear distinction between the terms narcotic drugs and marihuana. In its subtitle it states that its purpose is "to provide for a more effective control of narcotic drugs and marihuana, \* \* \*". The second part of Subsection 11 of Section 241 (a)(11) of the Immigration and Nationality Act, as amended by the Narcotic Control Act of 1956, does not use the term narcotic drugs, but relates to the possession of marihuana and other specifically named substances for certain specific purposes, but does not provide for deportation for the conviction of the mere possession of marihuana. The legislative history and the committee reports pertaining to the Narcotic Control Act of 1956 also

show that a definite distinction is made between the terms narcotic drugs and marihuana. [4]

Title 21, U.S.C.A. 171, relating to Food and Drugs, in defining the term narcotic drug states that it shall have the meaning ascribed to the term narcotic drug by Section 3228 (g) of Title 26. This section pertains to the 1939 Code and is presently found in Title 26, U.S.C.A. Section 4731 (1954 Code), and marihuana is not included in the definition. Title 21, U.S.C.A. 176 does define marihuana, but not as a narcotic or a narcotic drug. Plaintiff was convicted of the mere possession of marihuana and since marihuana does not come within the definition of a narcotic drug, the charge on which the Order of Deportation is based does not apply in the case of this plaintiff.

### XIII.

Plaintiff has exhausted his administrative remedies.

Wherefore, the plaintiff prays that the Court review the record of his deportation proceedings and enter judgment that he is not deportable from the United States upon the charge contained in the Order of Deportation, and that preceding the judgment of the Court, defendant and his subordinates be restrained from taking plaintiff into custody and effecting his deportation from the United States.

Dated: July 3, 1957.

/s/ HARLIN M. FULLER,  
Attorney for Plaintiff. [5]

[Endorsed]: Filed July 3, 1957.



[Title of District Court and Cause.]

ANSWER TO PETITION FOR  
JUDICIAL REVIEW

The defendant above named, by and through the undersigned, in Answer to the Petition for Judicial Review on file herein, Admits, Denies and Alleges as follows:

I.

Neither admits nor denies the allegations contained in Paragraph I of plaintiff's Petition, and same being a conclusion of law.

II.

In answer to Paragraph II of plaintiff's Petition, defendant does not have sufficient information upon which to base a belief as to the truth of the allegations therein contained and on that ground denies generally and specifically each and every allegation therein. [6]

III.

Admits the allegations contained in Paragraphs III, IV, V and VI of plaintiff's Petition.

IV.

Answering Paragraph VII of plaintiff's Petition, defendant denies that on or about January 11, 1957, the plaintiff was ordered deported, and alleges that on or about January 3, 1957, the plaintiff was ordered deported. Except as denied all other allegations contained in Paragraph VII are admitted.

## V.

Answering Paragraph VIII of plaintiff's Petition, defendant admits the allegations contained therein.

## VI.

Answering Paragraph IX of plaintiff's Petition, defendant admits all of the allegations contained in said Paragraph IX with the exception of the phrase "acting as a subordinate and under the direction of the defendant" which allegation the defendant denies.

## VII.

Answering Paragraph X of plaintiff's Petition, defendant admits the allegations contained therein.

## VIII.

Answering Paragraph XI of plaintiff's Petition, defendant denies that it is the intention of the defendant to take the plaintiff into custody and deport him from the United States under the Order of Deportation if he has not departed under the Order by July 15, 1957. The Immigration and Naturalization Service will not remove the plaintiff from the jurisdiction of this court during the pendency of the present litigation. Except as denied all other allegations contained in Paragraph XI of plaintiff's Petition are admitted. [7]

## IX.

Answering Paragraph XII of plaintiff's Petition, defendant denies generally and specifically each and every allegation contained therein.

## X.

Answering Paragraph XIII of plaintiff's Petition, defendant admits the same.

For a Further, Separate and First Affirmative Defense, Defendant Alleges:

## I.

That the plaintiff has been accorded a full and fair hearing in conformity with law to determine his right to be and remain in the United States. There will be offered in evidence when this cause is tried a certified record of the Immigration and Naturalization Service, Department of Justice, relating to the plaintiff, containing the complete record of the deportation proceedings before the Immigration and Naturalization Service.

For a Further, Separate and Second Affirmative Defense, Defendant Alleges:

## I.

Plaintiff's Petition on file herein fails to state a claim upon which relief can be granted.

Wherefore, defendant prays for a judgment dismissing the said Petition, denying the relief prayed for therein, and for such other relief as to the Court seems just and proper in the [8] premises.

LAUGHLIN E. WATERS,  
United States Attorney,  
RICHARD A. LAVINE,  
Assistant U. S. Attorney,  
Chief of Civil Division,



NORMAN R. ATKINS,  
Assistant U. S. Attorney,  
/s/ NORMAN R. ATKINS,  
Assistant U. S. Attorney,  
Attorneys for Defendant. [9]

Affidavit of Service by Mail Attached. [10]

[Endorsed]: Filed August 9, 1957.

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[Title of District Court and Cause.]

## PRE-TRIAL CONFERENCE ORDER

Following pre-trial proceedings pursuant to Rule 16 of the Federal Rules of Civil Procedure and Local Rule 9 of this Court It Is Ordered:

### I.

This is an action for judicial review of deportation proceedings based on a complaint filed by plaintiff Manuel Mendoza-Rivera, against Albert Del Guercio, as District Director of the Immigration and Naturalization Service, Los Angeles, California, defendant. The defendant has answered.

### II.

Federal jurisdiction is involved upon the ground that the complaint was filed and these proceedings were instituted against the defendant pursuant to Title 28, U.S.C.A., Section 2201 and Title 5, U.S.C.A., Section 1009, for a judgment declaring that plaintiff is not deportable from the United States on the charge in the Order to Show Cause and the Warrant of Deportation. [11]

## III.

The following facts are admitted and require no proof:

(A) Plaintiff Manuel Mendoza-Rivera is a native and citizen of Mexico, 24 years of age;

(B) Plaintiff last entered the United States at San Ysidro, California on or about March 15, 1955;

(C) Plaintiff was convicted in the Superior Court of the State of California, at Los Angeles, California, on January 10, 1952 for violation of 11,500, Health and Safety Code of the State of California, possession of flowering tops and leaves of Indian Hemp, committed on October 25, 1951.

(D) Indian Hemp is known as marihuana.

(E) A deportation hearing was accorded plaintiff and following completion of said hearing on April 12, 1957 the Special Inquiry Officer of the Immigration and Naturalization Service made the following order:

“Order: It is ordered that the Respondent be deported from the United States in the manner provided by law on the charge contained in the Order to Show Cause.”

The charge as stated in the Order To Show Cause reads as follows:

“Section 241(a)(11) of the Immigration and Nationality Act, in that, you at any time have been convicted of a violation of any law or regulation relating to the illicit possession of narcotic drugs; Section 11500, Health and Safety Code of the State of California.”

(F) On May 20, 1957 the Board of Immigration Appeals, Washington, D. C. made the following order:

“Order: It is ordered that the appeal be and the same is hereby denied.”

#### IV.

There are no reservations as to facts recited in Paragraph III above.

#### V.

There are no facts in issue which have not been admitted above and there are no facts remaining to be litigated at the trial. [12]

#### VI.

The exhibits to be offered at the trial, together with a statement of all admissions by and all issues between the parties with respect thereto are as follows:

(A) The defendant will present at the time of trial the certified file of the Immigration and Naturalization Service relating to the deportation proceedings of the plaintiff herein.

#### VII.

The following issues of law, and no others, remain to be litigated upon the trial:

(A) Does Section 241(a)(11) of the Immigration and Nationality Act as amended by the Narcotic Control Act of 1956, make a distinction between a narcotic drug and marihuana whereby a convic-

tion of possession of marihuana would not be construed as a conviction of possession of a narcotic drug?

(B) Does Section 241(a)(11) as amended by the Narcotic Control Act of 1956, require that an alien who has been convicted of the mere possession of marihuana be deported from the United States?

(C) Do Sections 11,001 to 11,500 of the Health and Safety Code of the State of California define narcotic drugs to include marihuana, and if so shall this definition or the definition and meaning of the term "narcotic drug" as set out in the Federal statutes govern the determination as to whether an alien has been convicted of the possession of a narcotic drug as that term is used in Section 241 (a) (11) of the Immigration and Nationality Act as amended by the Narcotic Control Act of 1956?

Dated: November 4, 1957.

/s/ HARRY C. WESTOVER,  
United States District Judge.

Approved as to form and substance:

/s/ HARLIN M. FULLER,  
Attorney for Plaintiff.

/s/ NORMAN R. ATKINS,  
Attorney for Defendant. [13]

[Endorsed]: Filed November 4, 1957.

[Title of District Court and Cause.]

## OPINION

Plaintiff, Manuel Mendoza-Rivera, is a citizen of Mexico who has been in the United States since the age of two years. On January 10, 1952, in the Superior Court of the State of California, in and for the County of Los Angeles, he was convicted of possession of flowering tops and leaves of Indian Hemp, in violation of Section 11,500 of the Health and Safety Code of the State of California, and was sentenced to imprisonment for the term of ninety days.

On December 20, 1956, some five years later, plaintiff herein was served with an Order to Show Cause and a Notice of Hearing, which set out that inasmuch as plaintiff [16] was convicted on January 10, 1952, at Los Angeles, California, of the offense of possession of flowering tops and leaves of Indian Hemp (marihuana), he was subject to be taken into custody and deported, pursuant to the provisions of Section 241(a) (11) of the Immigration and Nationality Act. A Hearing was had before a special inquiry officer on January 3, 1957, and the plaintiff was ordered deported. From this Order plaintiff appealed, and on January 31, 1957, the Chairman of the Board of Immigration Appeals made an order in which he reviewed the action taken by the hearing officer. The Order reads in part as follows:

“\* \* \* at the time of his [plaintiff's] last entry



on March 15, 1955 the respondent was not excludable by the law then existing since mere naked possession of a narcotic was not a ground of excludability \* \* \*. Mere possession was not made a ground of inadmissibility until the amendment to the Immigration and Nationality Act by Section 301(a), Act of July 18, 1956 (70 Stat. 575). Since the alien had entered the United States prior to the date of the amendment he was not at the time of entry within one of the classes of aliens excludable by the law existing at the time of such entry. Accordingly, we find the charge stated in the Order to Show Cause not sustained. The proceedings will be terminated.”

However, on March 11, 1957, the Immigration and Naturalization Service sent to plaintiff herein a second Order to Show Cause and Notice of Hearing, alleging in substance the charges as made in the Order to Show Cause dated December 20, 1956. A hearing was had upon the Order to Show [17] Cause, and on April 12, 1957, the special inquiry officer held again that the plaintiff herein be deported.

An appeal was taken by this plaintiff to the Board of Immigration Appeals, Department of Justice, Washington, D. C., and on May 20, 1957, the Chairman of the Board of Appeals filed an Order holding that plaintiff was deportable under Section 241(a) (11) of the Immigration and Nationality Act, as amended by the Act of July 18, 1956, and dismissed the appeal. Thereafter this petition for judicial review of the Order of Deportation was filed by the plaintiff.

On July 18, 1956 Congress amended the Immigration and Nationality Act and provided mere possession of a narcotic drug would be sufficient to justify deportation. Section 1251, Title 8, Subdivision (a) (11) provides that an alien may be deported:

“\* \* \* who at any time has been convicted of a violation of any law or regulation relating to the illicit traffic in narcotic drugs, or who has been convicted of a violation of any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation or exportation of opium, coca leaves, heroin, marihuana, any salt derivative or preparation of opium or coca leaves or isonipecaine or any addiction-forming or addiction-sustaining opiate; \* \* \*” [18]

The sole contention before the Court in this proceeding is whether the term “narcotic drug” in Section 1251 (a) (11) includes marihuana.

Examination of Section 1251 (a) (11) indicates that Congress has seen fit to include in the section a number of different offenses. The section provides that an alien may be deported (1) who has at any time been convicted of a violation of any law or regulation relating to the illicit traffic in narcotic drugs; (2) who has been convicted of a violation of any law or regulation governing or

controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or (3) the possession for the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation or exportation of opium, coca leaves, heroin, marihuana, any salt derivative or preparation of opium or coca leaves or isonipecaine or any addiction-forming or addiction-sustaining opiate.

In Item (3) above, Congress uses the term "marihuana, \* \* \* or any addiction-forming or addiction-sustaining opiate." If Congress wished to include within the definition of narcotic drugs in (1) above "marihuana", so there would have been no question as to its intent, it could very easily have added the word "marihuana." Congress knew, or should have known, that there had been a question as to whether the term "narcotic drugs" included marihuana. Certainly it should have been cognizant of the implications which would arise in omitting the term "marihuana."

If plaintiff herein is to be deported, he must be deported because he has been convicted of a violation [19] relating to illicit traffic in narcotic drugs. Plaintiff admits that marihuana under the laws of the State of California is classified as a narcotic drug but contends marihuana is not included in the term "narcotic drugs" as defined by Section 1251 (a) (11).

Section 101 of the Narcotic Control Act of 1956



covers unlawful acquisition of marihuana. Section 102 treats of transportation of marihuana. These sections refer to the amendments of the 1954 Code —“The Narcotic Drug Import and Export Act.” Section 103, which amends Section 7237 of the Internal Revenue Code states: “Violation of narcotic drug and marihuana laws.”

Section 105 relates to the importation of narcotic drugs. Section 106 refers to the smuggling of marihuana. Section 108 deals with unlawful possession of narcotic drugs and marihuana on vessels.

It would appear that Congress, in enacting Public Law 728, kept in mind a distinction between marihuana and narcotic drugs. In many of the sections as noted above Congress referred to narcotic drugs and marihuana, and Section 106 refers exclusively to the smuggling of marihuana. The amendment to the Immigration and Nationality Act with which we are concerned in this proceeding was a part of Public Law 728. We are at a loss to comprehend how Congress could make a distinction between narcotic drugs and marihuana in the first part of Public Law 728 and not make the same distinction in the last part.

A review of Public Law 728 forces us to conclude that Congress distinguishes between “narcotic drugs” and “marihuana.” The section under which the government seeks to deport plaintiff used only the term “narcotic drugs.” [20] We must hold that Congress did not intend to include marihuana within the definition of narcotic drugs.

The Court will find plaintiff not deportable upon the grounds as set forth in the Order of Deportation. Counsel for plaintiff will prepare Findings of Fact and Judgment in conformity with the rule.

Dated this 24th day of Feb., 1958.

/s/ HARRY C. WESTOVER,  
U. S. District Judge. [21]

[Endorsed]: Filed February 24, 1958.

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United States District Court, Southern  
District of California, Central Division

No. 813-57 HW

MANUEL MENDOZA-RIVERA,           Plaintiff,

vs.

RICHARD C. HOY, as District Director of the  
Immigration and Naturalization Service, Los  
Angeles, California,                   Defendant.

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND JUDGMENT

This cause came on regularly for trial on January 13, 1958, and thereafter was continued to and concluded on February 24, 1958 in the above-entitled Court, before the Honorable Harry C. Westover, Judge Presiding, sitting without a jury. Plaintiff's petition was filed and the proceedings were instituted against the defendant pursuant to

Title 28, U.S.C.A., Section 2201, commonly known as the Declaratory Judgment Act, and Title 5, U.S.C.A. Section 1009, commonly known as Section 10 of the Administrative Procedure Act, for a judgment declaring that plaintiff is not deportable from the United States as charged by the defendant. Defendant filed an Answer to said Petition for judicial review. A pre-trial conference was had and a pre-trial order was made wherein it was stated that there were no facts in issue which have not been admitted as set forth in the pre-trial conference order, and that there were no facts remaining to be litigated at the trial. The only [24] issue remaining for determination was whether the term "narcotic drug", in Section 241(a)(11) of the Immigration and Nationality Act of 1952, as amended by Public Law 728, passed July 18, 1956 [8 U.S.C.A. 1251(a)(11)] includes marihuana. At the commencement of the trial it was stipulated and agreed to by counsel and ordered that the proceedings be and they were amended to insert the name of Richard C. Hoy, the present District Director of the Immigration and Naturalization Service, in lieu and in place of Albert Del Guercio, who was District Director of the Immigration and Naturalization Service at Los Angeles, California, at the commencement of these proceedings, as defendant. At the trial all parties were afforded full opportunity to be heard and to argue the law. The Court has fully considered the Petition, Answer, arguments and memoranda of counsel. Upon the entire record, the Court makes the following:

## Findings of Fact

### I.

Plaintiff is an alien, a native and citizen of Mexico, twenty-five years of age, who first came to the United States at the age of two years, and who last entered the United States at San Ysidro, California, on or about March 15, 1955.

### II.

Richard C. Hoy is the present District Director of the Immigration and Naturalization Service, Department of Justice, at Los Angeles, California.

### III.

On January 10, 1952, in the Superior Court of the State of California, in and for the County of Los Angeles, the Plaintiff was convicted of possession of flowering tops and leaves of Indian Hemp, in violation of Section 11,500 Health and Safety Code of the State of California. For this offense he was sentenced to 90 days in the Los Angeles County Jail. Indian Hemp is commonly known as Marihuana.

### IV.

On March 11, 1957, the acting District Director of the Immigration [25] and Naturalization Service at Los Angeles, California, sent to the plaintiff herein an Order to Show Cause and Notice of Hearing, which set out that in as much as Plaintiff was convicted on January 10, 1952, at Los Angeles, California, for the offense of possession of flowering tops and leaves of Indian Hemp, committed on

October 25, 1951, he was subject to be taken into custody and deported, pursuant to Section 241(a)(11) of the Immigration and Nationality Act, in that he had been convicted of a law relating to the illicit possession of narcotic drugs, Section 11,500, Health and Safety Code of the State of California. A hearing was had upon the Order to Show Cause, and on April 12, 1957, the Special Inquiry Officer held that Plaintiff herein be deported. An appeal was taken by this plaintiff to the Board of Immigration Appeals, Department of Justice, Washington, D. C., and on May 20, 1957, the chairman of the Board of Immigration Appeals filed an Order holding that plaintiff was deportable under Section 241(a)(11) of the Immigration and Nationality Act, as amended by the Act of July 18, 1956, and dismissed the appeal. Thereafter, this Petition for judicial review of the Order of Deportation was filed by the Plaintiff.

## V.

On July 18, 1956, Congress passed Public Law 728, also known as the Narcotic Control Act of 1956, and therein amended Section 241(a)(11) of the Immigration and Nationality Act of 1952, by providing that a conviction for the mere possession of a narcotic drug would be sufficient to justify deportation.

Section 241(a)(11) of the Immigration and Nationality Act of 1952 prior to the amendment enacted July 18, 1956 provided that an alien may be deported:



“(who) is, or hereafter at any time after entry has been, a narcotic drug addict, or who at any time has been convicted of a violation of any law or regulation relating to the illicit traffic in narcotic drugs, or who has been convicted of a violation of any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for [26] the purpose of the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation or exportation of opium, coca leaves, heroin, marihuana, any salt derivative or preparation of opium or coca leaves or isonipecaine or any addiction-forming or addiction sustaining opiate; \* \* \*”

Section 241(a)(11) of the Immigration and Nationality Act as amended July 18, 1956, Title 8, U.S.C.A. 1251 (a)(11) provides that an alien may be deported:

“(who) is, or hereafter at any time after entry has been, a narcotic drug addict, or who at any time has been convicted of a violation of, or a conspiracy to violate, any law or regulation relating to the illicit possession of or traffic in narcotic drugs, or who has been convicted of a violation of, or a conspiracy to violate, any law or regulation governing or controlling the taxing, manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, exportation, or the possession for the purpose of the manufacture,

production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, any salt derivative or preparation of opium or coca leaves or isonipecaine or any addiction-forming or addiction-sustaining opiate; \* \* \*

## VI.

House Report No. 2388, dated June 19, 1956, and Conference Report No. 2546, dated June 29, 1956 on Public Law 728 which was thereafter passed by Congress on July 18, 1956, which amended Section 241(a)(11) of the Immigration and Nationality Act of 1952, distinguished between the narcotic and marihuana possessor and also distinguished between marihuana and narcotic drugs in other ways.

Public Law 728, entitled "Narcotic Control Act of 1956" has the following sub-title: "Act To Amend The Internal Revenue Code of 1954 And The Narcotic Drug Import And Export Act To Provide For a More [27] Effective Control Of Narcotic Drugs And Marihuana, And For Other Related Purposes." Section 101 of the Act pertains to unlawful acquisition of marihuana; Section 102 of the Act pertains to the unlawful transportation of marihuana; Section 103 of the Act relates to both narcotic drugs and marihuana; Section 105 pertains to the Importation of Narcotic Drugs; Section 106 pertains to smuggling of marihuana; Section 108 pertains to the "unlawful

possession of narcotic drugs and marihuana on vessels.” There is no language or expression in Public Law 728 or in the Congressional Committee Reports on this statute which indicate or express the intention that marihuana was included in the term “narcotic drugs” as that term is used in Section 241(a)(11) of the Immigration and Nationality Act of 1952, as amended by the said statute.

### Conclusions of Law

In consideration of the foregoing Findings of Fact, it is concluded:

#### I.

This Court has jurisdiction over this proceeding by authority of Title 28, U.S.C.A. Section 2201 and Title 5, U.S.C.A. Section 1009.

#### II.

Marihuana is not a narcotic drug within the meaning of Section 241(a)(11) of the Immigration and Nationality Act of 1952 as amended by Public Law 728, passed July 18, 1956 [8 U.S.C.A. 1251(a)(11)].

#### III.

Plaintiff is not subject to deportation under Section 241(a)(11) of the Immigration and Nationality Act of 1952 as amended by Public Law 728, passed by Congress July 18, 1956 [8 U.S.C.A. 1251(a)(11)].

#### IV.

The Order of Deportation of the Immigration and Naturalization Service, Department of Justice,



directing the deportation of the plaintiff Manuel Mendoza-Rivera is unlawful and is void in that it is in excess of the statutory authority.

### Judgment

In accordance with the foregoing Findings of Fact and Conclusions [28] of Law, it is Ordered, Adjudged and Decreed:

The Order of Deportation of the Immigration and Naturalization Service, Department of Justice, directing the deportation of the plaintiff Manuel Mendoza-Rivera is hereby set aside and declared null and void and of no effect.

Dated this 10th day of March, 1958.

/s/ HARRY C. WESTOVER,  
U. S. District Judge. [29]

Acknowledgment of Service Attached. [30]

[Endorsed]: Filed March 10, 1958. Entered March 12, 1958.

[Title of District Court and Cause.]

STIPULATION SUBSTITUTING RICHARD  
C. HOY AS DEFENDANT AND ORDER  
THEREON

It Is Hereby Stipulated by and between the parties hereto, through their respective attorneys of record, that Richard C. Hoy, District Director of Immigration and Naturalization at Los Angeles, California, who took office and was officially appointed on January 6, 1958, be substituted as defendant in the above entitled action in the place and stead of Albert Del Guercio.

Dated: This 3rd day of July, 1958.

/s/ HARLIN M. FULLER,  
Attorney for Plaintiff.

LAUGHLIN E. WATERS,  
United States Attorney,  
RICHARD A. LAVINE,  
Assistant U. S. Attorney,  
Chief, Civil Division,

/s/ NORMAN R. ATKINS,  
Assistant U. S. Attorney,  
Attorneys for Defendant.

It Is So Ordered this 8th day of July, 1958.

/s/ HARRY C. WESTOVER,  
U. S. District Judge. [31]

[Endorsed]: Filed July 9, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Richard C. Hoy, District Director of the Immigration and Naturalization Service at Los Angeles, California, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on March 12, 1958.

Dated: April 24, 1958.

LAUGHLIN E. WATERS,  
United States Attorney,  
RICHARD A. LAVINE,  
Assistant U. S. Attorney,  
Chief of Civil Division,  
NORMAN R. ATKINS,  
Assistant U. S. Attorney,  
/s/ NORMAN R. ATKINS,  
Attorneys for Defendant. [32]

Affidavit of Service by Mail Attached. [33]

[Endorsed]: Filed April 24, 1958.

[Title of District Court and Cause.]

APPLICATION FOR EXTENSION OF TIME  
IN THE FILING AND DOCKETING OF  
THE RECORD ON APPEAL AND ORDER  
THEREON; AFFIDAVIT OF NORMAN R.  
ATKINS [34]

The defendant herein herewith respectfully applies for an extension of time to and including July 23, 1958, in which to file and docket the record on appeal in the within case. The reasons for the application of the within extension are contained in the Affidavit of Norman R. Atkins, attached hereto.

Dated: May 28, 1958.

LAUGHLIN E. WATERS,  
United States Attorney,  
RICHARD A. LAVINE,  
Assistant U. S. Attorney,  
Chief of Civil Division,  
NORMAN R. ATKINS,  
Assistant U. S. Attorney,  
/s/ NORMAN R. ATKINS,  
Attorneys for Defendant.

It Is So Ordered this 28th day of May, 1958.

/s/ LEON R. YANKWICH,  
U. S. District Judge. [35]

Affidavit of Norman R. Atkins

State of California,  
County of Los Angeles—ss.

Norman R. Atkins, being first duly sworn, deposes and says:

That he is an Assistant United States Attorney for the Southern District of California and one of the attorneys of record in the within action;

That because of time consumed in consulting with and obtaining authorization from the appropriate government officials concerning the within action, insufficient time remains in which to consider, prepare and docket the record on appeal.

/s/ NORMAN R. ATKINS,  
Affiant.

Subscribed and sworn to before me this 28th day of May, 1958.

[Seal] /s/ LOIS M. PARKINSON,  
Notary Public in and for said County and State.

My Commission Expires Feb. 24, 1961. [36]

Affidavit of Service by Mail Attached. [37]

[Endorsed]: Filed May 28, 1958.

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[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth

Circuit, in the above-entitled matter:

A. The foregoing pages numbered 1 to 39, inclusive, containing the original:

Petition for Judicial Review.

Answer.

Pre-Trial Conference Order.

Minute Order 11/4/57 re pretrial conference.

Minute Order 1/13/58 re trial.

Opinion.

Minute Order 2/24/58 re further trial.

(copy) Clerk's notice of entry of judgment.

Findings of Fact, Conclusions of Law and Judgment.

Stipulation substituting party defendant.

Notice of Appeal.

Application for extension of time to file and docket record on appeal, etc.

Designation of Record on Appeal.

B. Defendant's Exhibit "A".

I further certify that my fee for preparing the foregoing record, amounting to 1.60, has not been paid by appellant.

Dated: July 21, 1958.

[Seal]

JOHN A. CHILDRESS,

Clerk,

/s/ By WM. A. WHITE,

Deputy Clerk.

[Endorsed]: No. 16107. United States Court of Appeals for the Ninth Circuit. Richard C. Hoy, District Director of Immigration and Naturalization Service, Los Angeles, California, Appellant, vs. Manuel Mendoza-Rivera, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed and Docketed: July 22, 1958.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

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United States Court of Appeals  
For The Ninth Circuit

No. 16107

RICHARD C. HOY, District Director Immigration  
and Naturalization Service, etc.,  
Appellant,

vs.

MANUEL MENDOZA-RIVERA, Appellee.

APPELLANT'S STATEMENT OF  
POINTS ON APPEAL

The appellant hereby designates the following  
Points on Appeal in the above entitled matter:

I.

Conviction of an alien under California Law of



the offense of unlawful possession of marihuana is a conviction of "illicit possession of \* \* \* narcotic drugs" within the meaning of the 1956 Amendment to Section 241(a)(11) of the Immigration and Nationality Act of 1952 [8 U.S.C. §1241(a)(11), Supp. 5, 1958] and therefore constitutes a proper ground for deportation of said alien.

Dated: July 31, 1958.

LAUGHLIN E. WATERS,  
United States Attorney,  
RICHARD A. LAVINE,  
Assistant U. S. Attorney,  
Chief of Civil Division,  
NORMAN R. ATKINS,  
Assistant U. S. Attorney,  
/s/ NORMAN R. ATKINS,  
Attorneys for Appellant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed August 2, 1958. Paul P. O'Brien, Clerk.

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[Title of Court of Appeals and Cause.]

APPELLANT'S DESIGNATION OF  
RECORD TO BE PRINTED

Appellant hereby designates the following record to be printed in the above-entitled matter.

1. Petition for Judicial Review;
2. Answer;
3. Pre-trial Conference Order;
4. Opinion;



5. Findings of Fact, Conclusions of Law and Judgment;
6. Stipulation substituting party defendant;
7. Notice of Appeal;
8. Application for extension of time to file and docket record on appeal, etc.;
9. Designation of Record on Appeal;
10. Stipulation regarding Exhibit A;
11. Appellant's Designation of Record to be Printed;
12. Appellant's Statement of Points on Appeal.

Counsel for the parties have stipulated, subject to the approval of the Court, that Exhibit A received in evidence, which consists of the Administrative Record of the Immigration and Naturalization Service, might be considered in its original form and need not be printed.

Dated: July 31, 1958.

LAUGHLIN E. WATERS,  
United States Attorney,  
RICHARD A. LAVINE,  
Assistant U. S. Attorney,  
Chief of Civil Division,  
NORMAN R. ATKINS,  
Assistant U. S. Attorney,  
/s/ NORMAN R. ATKINS,  
Attorneys for Appellant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed August 2, 1958. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

### STIPULATION REGARDING EXHIBIT A

It Is Hereby Stipulated, by and between the parties hereto, through their respective attorneys of record, that Exhibit A, the Administrative Record of the Immigration and Naturalization Service, need not be printed and may be considered in its original form.

Dated: August 4, 1958.

LAUGHLIN E. WATERS,  
United States Attorney,  
RICHARD A. LAVINE,  
Assistant U. S. Attorney,  
Chief of Civil Division,  
NORMAN R. ATKINS,  
Assistant U. S. Attorney,  
/s/ NORMAN R. ATKINS,  
Attorneys for Appellant.

HARLIN M. FULLER,  
/s/ HARLIN M. FULLER,  
Attorney for Appellee.

[Endorsed]: Filed August 22, 1958. Paul P. O'Brien, Clerk.